

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA, *et al.*,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT
OF COMMERCE, *et al.*,

Defendants,

and

DIANA MARTINEZ, *et al.*; COUNTY OF
SANTA CLARA, CALIFORNIA, *et al.*; and
STATE OF NEW YORK, *et al.*,

Intervenor-Defendants.

Case No. 2:18-cv-00772-RDP

JOINT MOTION FOR EXTENSION OF TIME AND FOR CLARIFICATION

All parties, by and through undersigned counsel, hereby request 1) an extension of time to submit a proposed briefing schedule to this court; 2) an extension of time to submit briefing on whether this case should be stayed; and 3) a clarification of this Court's minute order, ECF No. 179.

In support thereof, the parties state as follows:

1. This Court held a status conference on October 5, 2020. During the status conference, the Court discussed Plaintiffs' motion for a three-judge panel, as well as next steps in the litigation of this case.

2. On October 9, 2020, this Court denied plaintiffs' motion for a three-judge panel. *See* Memorandum Opinion and Order, ECF No. 178.

3. On October 14, this Court issued the following Text Order:

This matter is before the court on its Second Amended Scheduling Order [147]. Dispositive motions remain DUE on or before October 21, 2020. Also on or before October 21, 2020, the parties SHALL (1) meet and confer and submit a joint proposed briefing schedule on dispositive motions; and (2) file a supplemental brief that is no longer than 10 pages regarding whether the court should stay this case. The 10 page brief may address the direct appeal at the Supreme Court of the three-judge court in *New York v. Trump*, 2020 WL 5422959 (S.D.N.Y. Sept. 10, 2020), the Supreme Courts stay in *Ross v. National Urban League*, 592 U.S. ____ (2020), and/or any other issue potentially relevant to a stay in this case.

ECF No. 179.

4. In the meantime, on October 16, the Supreme Court issued an order in the appeal of the three-judge court in *New York v. Trump*. In that order, the Supreme Court postponed “[f]urther consideration of the question of jurisdiction . . . to the hearing of the case on the merits.” *See* Order, *Trump v. New York*, No. 20-366 (Oct. 16, 2020). The Court has set the matter for argument on November 30, 2020. *See id.* A copy of the Supreme Court’s order is attached hereto.

5. The parties request three forms of relief in this motion.

6. *First*, the parties request a nine-day extension of time, until October 30, 2020, for submitting a dispositive motion briefing schedule. The parties have initially conferred regarding such a schedule, but have not yet completed their discussions, and believe that additional time—especially in light of recent developments in this and other cases—would allow those discussions to continue, which the parties hope will result in a more efficient resolution of the matters in this case for both the Court and the parties.

7. *Second*, the parties request a nine-day extension of time, until October 30, 2020, for submitting their briefs regarding whether the Court should stay this matter. Like the extension of time regarding a briefing schedule, the parties believe that a modest extension of time for the due date

on stay briefing would allow the parties to confer regarding this matter, as well as provide time for the parties to prepare their briefs to the extent they cannot reach agreement. Moreover, the parties believe that briefing on a stay is likely to be tied to any briefing schedule that they may propose.

8. *Third*, the parties request clarification regarding this Court's Order. As it stands now, the Order is subject to multiple interpretations. One interpretation is that the dispositive motion deadline is currently October 21, unless the parties submit a proposed briefing schedule by that date. That proposed briefing schedule may, for example, call for the submission of opening briefs at a future date. Another interpretation is that all parties must submit dispositive motions on October 21, with the briefing schedule only affecting subsequent briefs (such as responses and replies). Accordingly, the parties request clarification regarding the Court's Order. While the parties are seeking an extension of time regardless of which interpretation is correct, they note that an extension would especially be necessary if the Court is requiring the parties to file their briefs on the dispositive motion deadline. The federal government Defendants, at least, do not anticipate being in a position to file a dispositive motion by the current due date of October 21, due to the press of other litigation matters and recent developments in this and other cases. To the extent the Court is amenable, the parties would propose that, rather than filing dispositive motions on the due date (whether October 21 or, if the Court grants the parties' motion, the proposed new due date of October 30), the parties submit a proposed briefing schedule for all briefs on that due date. Such a schedule would ultimately be more efficient for the Court and the parties, as it may allow for the Court to resolve any motions to stay proceedings before proceeding to dispositive motion briefing (if, for example, the parties propose that dispositive briefs not be submitted until after the Court resolves whether it should stay this case), or may allow for an orderly briefing schedule through the submission of cross-motions rather than simultaneous briefing.

9. The parties are amenable to appearing at a status conference to discuss these issues. A proposed order is attached.

Dated: October 19, 2020

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